

Remarks

Claims 1-10 are now pending in this application for which applicant seeks reconsideration.

Amendment

Claims 9 and 10 have been amended in order to direct the claims toward statutory subject matter. Applicant submits that the amendment to the claims have not otherwise changed the meaning or scope of the claims and would not necessitate a new ground of rejection by the examiner.

Objection

Claims 9-10 stand objected to because the examiner believes the term "execute:" may be indefinite. Applicant respectfully disagrees. Applicant submits that the term is grammatically correct and further, that the examiner's proposed amendment is grammatically incorrect. The term "execute:" clearly means that the steps of the claim that follow are executed by a computer program stored on a computer readable storage medium. Applicant cannot contemplate how the present phrasing of the claim would be indefinite under 35 U.S.C. §112, and reminds the examiner that it is his burden to make a *prima facie* case of indefiniteness with regard to the claims.

Subject Matter Rejection

Claims 1-10 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicant respectfully traverses the rejection. First, applicant notes that claims 1-8 are directed toward an "apparatus" and claims 9-10 are directed toward a "computer-readable storage medium storing a computer program." Each of these constructs is clearly a "machine, manufacture, or composition of matter" as required by 35 U.S.C. §101.

Second, applicant notes that the examiner's own requirement, that the claims recite "functional interrelations," is clearly met by the claims. For example, claim 1 recites a "music performance representing data input device" which inputs data representing a music performance. Next, a musical score notational element determining device determines music score notational elements required to display that data. Following this, a display size determining device determines display sizes of those notational elements to be displayed on a

display area. A horizontal length determining device determines a horizontal length of the display area. Next, a measures apportioning device performs various calculations in order to properly place the musical score notational elements based on the determined horizontal length, the various staff tiers comprising each measure, and other quantities, doing so measure by measure. Finally, a music score display data output device outputs music score display data according to the apportioning device. The remaining claims follow this general functioning. Hence, it is clear that the claims define "functional interrelations" between the enumerated elements.

Third, applicant reminds the examiner of the decision in *State Street Bank & Trust Company v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), in which the court ruled that a computer program is patentable if "it produces a useful, concrete and tangible result." Applicant submits that it is clear that under this standard the claimed invention is patentable, since the claimed "music score display data output device" has the function of outputting music score display data, which is a "useful, concrete, and tangible result."

Art Rejection

Claims 1-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Matsumoto (20010023633.) Applicant respectfully traverses the rejection. Matsumoto does not disclose the "display size determining device" and the "measures apportioning device" as variously claimed in independent claims 1, 6, and 9-10. In the present invention, the display size determining device does not determine the size of the display area, but rather the size of notational elements within the display area. Specifically, the display size determining device varies the size of notational elements as necessary, i.e. it makes the notational elements smaller as their number increases on a particular measure so that all the notational elements fit within the measure. Subsequently, these notational elements are properly positioned within a measure for improved readability by way of the claimed measures apportioning device. In contrast, Matsumoto is generally directed toward the creation of a "divided" musical score screen which can variously display different musical scores, potentially represented in different ways. Hence, Matsumoto is not even concerned with the same issue as the present invention. At best, Matsumoto merely discloses a "specifying device" that can specify the "staff and font size" (paragraph 8.) This is clearly not the same functionality of the claimed invention. Neither staff nor font are "musical score notational elements" as defined in the present specification (see page 2, paragraph 3.)

Applicant wishes to remind the examiner that it is his burden to show where and how the cited reference discloses the claimed invention. Therefore, applicant respectfully requests that in any subsequent rejection the examiner specifically point out the precise elements of an applied reference which correspond to the elements of the claims. Applicant submits that specificity in this regard is required in order to form a *prima facie* case for rejection under 35 U.S.C. §102.

Conclusion

Applicant submits that claims 1-10 patentably distinguish over the applied references and are in condition for allowance. Should the examiner have any issues concerning this reply or any other outstanding issues remaining in this application, applicant urges the examiner to contact the undersigned to expedite prosecution.

Respectfully submitted,
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DATE

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